

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DEBBIE ANN BERG, on behalf of herself and
all others similarly situated,

NO.

DEBBIE ANN BERG, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

EQUIFAX INFORMATION SERVICES, LLC

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

On behalf of herself and all others similarly situated, Plaintiff Debbie Ann Berg (“Plaintiff” or “Ms. Berg”), through her attorneys, respectfully alleges as follows:

I. NATURE OF THE ACTION

1. This is a consumer class action based upon the widespread violations by Defendant Equifax Information Services, LLC (“Equifax” or “Defendant”) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”). Equifax is regulated as a consumer reporting agency (“CRA”) under the FCRA. Equifax deprives consumers of their rights by willfully failing to comply with the FCRA requirements to block the reporting of fraudulent information in credit reports whenever it is presented with an identity theft report, in violation of 15 U.S.C. § 1681c-2. Further, Equifax deprives consumers of their rights by willfully failing to comply with the FCRA requirement to provide the notice required by 15 U.S.C. § 1681c-2(c)(2) after declining requests to block information.

2. Every year, individuals who were the victims of identity theft and requested Equifax block inaccurate and fraudulent information related to the identity theft have been similarly aggrieved by the same violations of 15 U.S.C. § 1681c-2.

3. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief for herself and a class of similarly situated consumers affected by Equifax's failure to comply with FCRA section 1681c-2's blocking requirements.

II. PARTIES

4. Plaintiff Debbie Ann Berg is a “consumer” as defined by the FCRA, 15 U.S.C. § 1681a(c), and resides in Puyallup, Washington.

5. Equifax is a “person,” and a “consumer reporting agency,” as defined by the FCRA, 15 U.S.C. §§ 1681a(b) and 1681a(f), respectively. Equifax prepares and sells “consumer reports” within the meaning of 15 U.S.C. § 1681a(d). Equifax regularly conducts business in the Western District of Washington and has a principal place of business located at 1550 Peachtree Street, N.W., Atlanta, Georgia 30309.

III. JURISDICTION AND VENUE

6. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 15 U.S.C. § 1681p
in that all claims are brought under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

7. Venue lies proper in this District pursuant to 28 U.S.C. § 1391(b).

8. Equifax is one of the “big three” credit reporting agencies in the United States.

9. Equifax sells consumer reports (commonly called “credit reports”) about millions of consumers annually.

10. Equifax is regulated by the FCRA.

IV. STATUTORY FRAMEWORK

11. The FCRA is intended “to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner.” *Cortez v. Trans Union, LLC*, 617 F.3d 688, 706 (3d Cir. 2010).

12. The FCRA was amended by Congress in 2003 by the Fair and Accurate Credit Transaction Act (“FACTA”), Pub L. No. 108-159 (2003), in order to, among other things, “prevent identity theft, improve resolution of consumer disputes, [and] improve the accuracy of consumer records.”

13. Prior to the 2003 amendments, victims of identity theft were afforded no special protections under the FCRA. As such, consumer reporting agencies, such as Equifax, were under no obligation to treat an identity theft claim any different than a regular dispute.

14. The 2003 amendments made it easier for identity theft victims to get
information resulting from identity theft removed from their credit reports. By enacting 15
U.S.C. § 1681c-2(a), Congress required CRAs to block the reporting of any information in the
file of a consumer that the consumer identifies as resulting from identity theft, not later than
four business days after receiving (1) appropriate proof of identity, (2) a copy of an identity
theft report, (3) the identification of such information by the consumer, and (4) a statement by
the consumer that the information is not information relating to any transaction by the
consumer.

15. The ability to obtain a “block” of information is especially important to consumers because once a block is in place, the account is permanently removed from the

1 consumer's credit report and creditors are prohibited from sending the blocked account to
 2 collections. *See* 15 U.S.C. § 1681m(f).

3 16. A regular consumer dispute (where no claim of identity theft is made), on
 4 the other hand, can at best result only in the "deletion" of an account, which removes the
 5 account from the consumer's credit report but allows the creditor to continue with collections
 6 unabated. *See* 15 U.S.C. § 1681i.

7 17. A CRA may decline to "block" information only if the CRA reasonably
 8 determines that the consumer's request is made in error, was based on a material
 9 misrepresentation or the consumer obtained goods, services or money as a result of the blocked
 10 transaction. *See* 15 U.S.C. § 1681c-2(c)(1).

11 18. If a block is declined, the CRA must then notify the consumer in writing of
 12 the business name and address of any furnisher of information that it contacted upon receiving
 13 the identity theft report and that the consumer has a right to add a statement to the file disputing
 14 the accuracy or completeness of the disputed information. *See* 15 U.S.C. §§ 1681c-2(c)(2)
 15 and 1681i(a)(5)(B).

16 19. In the absence of such a determination of material misrepresentation or error,
 17 a CRA cannot decline a request to block without first requesting additional information from
 18 the consumer for the purpose of determining the validity of the alleged identity theft. *See* 12
 19 C.F.R. § 1022.3(i)(1)(iii)(A).

20 20. "[I]f a CRA receives a police report containing detailed information as well as
 21 the signature, badge number, or other identifying information for the officer taking the report, it
 22 is not reasonable for the CRA to request additional information without 'an identifiable
 23 concern,' such as an indication that the report was fraudulent." *Osada v. Experian Info.*

1 *Solutions, Inc.*, No. 11-C-2856, 2012 WL 1050067, at *3 (N.D. Ill. Mar. 28, 2012) (citing 16
 2 C.F.R. § 603.3(c)(1) (renumbered at 12 C.F.R. § 1022.3(i)(3)(i)).

3 **V. FACTUAL ALLEGATIONS**

4 **A. Factual Allegations Regarding Defendant's Practices**

5 21. Despite the FCRA's requirements, Equifax regularly declines to block the
 6 reporting of fraudulent information by wrongfully rejecting valid identity theft reports outright
 7 and relying instead on the same verification procedures it uses for common disputes.

8 22. In violation of the FCRA, Equifax willfully and negligently fails to provide the
 9 notice required by section 1681c-2(c)(2) after declining to block information that, pursuant to
 10 section 1681c-2(c)(1), a consumer has alleged is the result of identity theft.

11 23. In further violation of the FCRA, Equifax willfully and negligently declines to
 12 block the reporting of information alleged by consumers to result from identity theft in
 13 violation of section 1681c-2(a) despite its receipt of all required documentation from the
 14 consumers.

15 24. The plain language of section 1681c-2 is clear and Equifax is on notice of its
 16 requirements, both from guidance from the Federal Trade Commission and the prior decision in
 17 *Osada, supra*.

18 25. According to standardized policies and procedures, Equifax willfully treats valid
 19 identity theft claims as regular credit disputes.

20 26. For any identity theft claims Equifax deems to be lacking in information,
 21 Equifax willfully, and according to standardized policies and procedures, declines to block the
 22 reporting of the fraudulent information outright rather than requesting additional information or
 23 documentation directly from the consumer as required by 12 C.F.R. § 1022.3(i).

1 **B. Factual Allegations Regarding Plaintiff's Experience**

2 27. Ms. Berg is a victim of identity theft. Ms. Berg reported the identity theft to the
3 Sheriff of Pierce County, Washington on or about December 15, 2014.

4 28. In or around December 2014, a person used Ms. Berg's personal information
5 without her knowledge to open an account with BMW Financial Services.

6 29. Defendant has been reporting derogatory and inaccurate statements and
7 information relating to Plaintiff and her credit history to third parties from at least November
8 2015.

9 30. Ms. Berg disputed the information on her Equifax consumer report. She
10 identified herself, advised Equifax that the BMW account was not hers and that it was
11 fraudulent, furnished Equifax with a copy of the police report she filed concerning the identity
12 theft and requested that Equifax block the fraudulent information.

13 31. In response to her dispute, Equifax sent Ms. Berg a form letter dated June 16,
14 2016. In the letter, Equifax stated:

15 Dear Debbie Ann Berg:

16 Enclosed is a copy of your Equifax credit file. Please review it for
17 any unauthorized accounts or inquiries. If unauthorized
18 information is reporting on your Equifax credit file, you may start
19 an investigation immediately on-line at
20 www.investigate.equifax.com. Using the Internet to initiate an on-
21 line investigation request will expedite the resolution of your
22 concerns. You may also start an investigation by completing and
23 returning the enclosed Research Request Form or by calling the
toll free telephone number on the credit file. Please advise us of
any documents that may help us in the reinvestigation, such as an
identity theft report or letters from credit grantors.

Please note, when you provide documents, including a letter, to
Equifax as part of your dispute, the documents may be submitted
to one or more companies whose information are the subject of
your dispute.

1 You should contact the credit grantors that are reporting
2 information you believe is fraudulent. Ask them to explain their
3 fraud investigation process, what steps would be taken and how
4 long the process normally takes. Additionally request that they
send you a letter or documentation stating the results of the
investigation. Upon receipt, forward a copy of that letter to us.

5 If your ID information, such as driver's license or social security
card, was lost or stolen, contact the appropriate issuing agency.

6 *Results Of Your Investigation* (For your security, the last 4 digits of
7 your credit account number(s) have been replaced by *)

8 **>>>We have reviewed your concerns and our conclusions are:**

9 Please be advised that Equifax, at this time, will not block the
10 information subject to the submitted identity Theft and/or police
report you provided as part of your dispute. We are contacting each
11 creditor directly to verify The account/s on your behalf. We will
also forward a copy of the documents you have provided to each
creditor for their Review.

12 32. Equifax enclosed a copy of Ms. Berg's credit file with the June 16, 2016 letter
13 declining to block the fraudulent information outright.

14 33. The June 16, 2016 letter did not explain why Equifax believed the identity theft
15 report to be invalid nor did it request any specific additional information from Plaintiff.

16 34. The June 16, 2016 letter did not contain any notice of the business name and
17 address of any furnisher of information that Equifax contacted upon receiving Plaintiff's
18 identity theft report nor did Equifax provide such notice to Ms. Berg within five (5) business
19 days thereafter.

20 35. The June 16, 2016 letter did not contain a notice that Ms. Berg had a right to add
21 a statement to her file disputing the accuracy or completeness of the disputed information nor
22 did Equifax provide such notice to Plaintiff within five (5) business days thereafter.
23

1 36. Equifax's failure to provide the required notice harmed Ms. Berg by depriving
 2 her of valuable and consequential information related to the theft of her identity, and her efforts
 3 to repair the resulting harm to her credit.

4 37. Rather than block the fraudulent information or request specific additional
 5 information from Plaintiff, Equifax negligently and willfully disregarded its obligations under
 6 the FCRA by merely seeking verification of the disputed accounts from the furnishers of that
 7 credit information and refusing to follow the FCRA requirements to block the reporting of
 8 fraudulent information in credit reports after it was presented with an identity theft report, in
 9 violation of section 1681c-2.

10 38. Equifax further negligently and willfully disregarded its obligations under the
 11 FCRA by failing to notify Ms. Berg in writing, within five (5) business days, both the business
 12 name and address of any furnisher of information that Equifax contacted upon receiving Ms.
 13 Berg's identity theft report and a notice that Ms. Berg had the right to add a statement to her
 14 consumer file disputing the accuracy or completeness of the information relating to the
 15 fraudulent BMW account, in violation of section 1681c-2(c)(2).

16 **VI. CLASS ACTION ALLEGATIONS**

17 39. The Plaintiff brings this action individually and as a class action, pursuant to
 18 Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following Classes:

19 **The Section 1681c-2(a) Class:** All persons for whom Equifax
 20 failed to block disputed information despite receiving the
 21 documentation required by Section 1681c-2(a) for the time period
 22 beginning five years from the date this action was commenced up
 23 to the date of final judgment.

22 **The Section 1681c-2(c)(2) Class:** All persons to whom Equifax
 23 sent a letter in the form of the June 16, 2016 letter that Equifax
 24 sent to Plaintiff, during the time period beginning five years from
 25 the date this action was commenced up to the date of final

judgment to whom Equifax did not also send a letter within five business days containing both the business name and address of any furnisher of information that Equifax contacted upon receiving the consumer's identity theft report and a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

Excluded from the Classes are Defendant and its officers, directors, agents, employees, counsel and its subsidiaries and affiliates; the presiding Judge and Magistrate Judge and their immediate family members; and, all persons who make a timely election to be excluded from the Classes.

40. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, Equifax receives and processes thousands of requests to block fraudulent information along with identity theft reports each year, and Equifax maintains the names and addresses of the persons making those requests.

41. **Existence and Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all members of the Class, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

a. Whether Equifax's failure to block information alleged to result from identity theft was lawful;

b. Whether Equifax provided the notice required by 15 U.S.C. § 1681c-2(c)(2) after refusing to block the reporting of information;

c. Whether, in the absence of a determination of fraud or mistake, Equifax must request additional information it believes to be lacking from a person making a claim of identity theft before refusing to block; and

1 d. Whether Equifax must specify the particular information it believes to be
 2 lacking when it requests additional information from a person making a claim of identity theft.

3 **42. Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the
 4 claims of each Class member. Plaintiff has the same claims for statutory and punitive damages
 5 that she seeks for absent class members.

6 **43. Adequacy. FED. R. CIV. P. 23(a)(4).** Plaintiff is an adequate representative
 7 of the Classes. Her interests are aligned with, and are not antagonistic to, the interests of the
 8 members of the Classes she seeks to represent, she has retained counsel competent and
 9 experienced in such litigation, and she intends to prosecute this action vigorously. Plaintiff and
 10 her counsel will fairly and adequately protect the interests of members of the Classes.

11 **44. Predominance and Superiority. FED. R. CIV. P. 23(b)(3).** Questions of law
 12 and fact common to the Class members predominate over questions affecting only individual
 13 members, and a class action is superior to other available methods for fair and efficient
 14 adjudication of the controversy. The statutory and punitive damages sought by each member
 15 are such that individual prosecution would prove burdensome and expensive given the complex
 16 and extensive litigation necessitated by Equifax's conduct. It would be virtually impossible for
 17 the Class members individually to redress effectively the wrongs done to them. Even if the
 18 Class members themselves could afford such individual litigation, it would be an unnecessary
 19 burden on the courts. Furthermore, individualized litigation presents a potential for
 20 inconsistent or contradictory judgments and increases the delay and expense to all parties and
 21 to the court system presented by the complex legal and factual issues raised by Equifax's
 22 conduct. By contrast, the class action device will result in substantial benefits to the litigants

1 and the Court by allowing the Court to resolve numerous individual claims based upon a single
2 set of proof in a unified proceeding.

3 **VII. CAUSES OF ACTION**

4 **COUNT I**

5 **Failure to Block Fraudulent Information**
6 **Violation of Fair Credit Reporting Act, 15 U.S.C. § 1681c-2(a)**

7 45. Plaintiff realleges and incorporates by reference all preceding paragraphs as
8 alleged above.

9 46. Equifax willfully and negligently failed to comply with section 1681c-2(a) of
10 the FCRA by failing to block information alleged by consumers to result from identity theft
despite receiving all information required by Section 1681c-2(a).

11 47. Plaintiff and Class Members seek actual damages, statutory damages, punitive
12 damages, attorney fees and costs pursuant to 15 U.S.C. §§ 1681n and o.

13 **COUNT II**

14 **Failure to Provide Required Notice**
15 **Violation of Fair Credit Reporting Act, 15 U.S.C. § 1681c-2(c)(2)**

16 48. Plaintiff realleges and incorporates by reference all preceding paragraphs as
17 alleged above.

18 49. Equifax willfully and negligently failed to comply with section 1681c-2(c)(2) of
19 the FCRA by failing to provide consumers with notice of the business name and address of any
20 furnisher of information that Equifax contacted upon receiving the consumer's identity theft
21 report and notice that the consumer has the right to add a statement to the consumer's file
22 disputing the accuracy or completeness of the disputed information.

50. Plaintiff and Class Members seek actual damages, statutory damages, punitive damages, attorney fees and costs pursuant to 15 U.S.C. §§ 1681n and o.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff and the Classes pray for relief as follows:

- A. An order certifying the case as a class action on behalf of the proposed Classes under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the undersigned counsel of record to represent same;
 - B. An award of actual, statutory and punitive damages for Plaintiff and the Classes;
 - C. An award of pre-judgment and post-judgment interest as provided by law;
 - D. An award of attorneys' fees and costs; and
 - E. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

RESPECTFULLY SUBMITTED AND DATED this 30th day of April, 2018.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com

By: /s/ Erika L. Nusser, WSBA #40854
Erika L. Nusser, WSBA #40854
Email: enusser@terrellmarshall.com

By: /s/ Benjamin M. Drachler, WSBA #51021
Benjamin M. Drachler, WSBA #51021
Email: bdrachler@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

1 James A. Francis, *pro hac vice forthcoming*
2 Email: jfrancis@consumerlawfirm.com
3 David A. Searles, *pro hac vice forthcoming*
4 Email: dsearles@consumerlawfirm.com
5 Joseph Gentilcore, *pro hac vice forthcoming*
6 FRANCIS & MAILMAN, P.C.
7 Land Title Building, Suite 1902
8 100 South Broad Street
9 Philadelphia, Pennsylvania 19110
10 Telephone: (215) 735-8600
11 Facsimile: (215) 940-8000

12 Roger Zamparo, Jr., *pro hac vice forthcoming*
13 Email: roger@zamparo.com
14 ZAMPARO LAW GROUP, P.C.
15 2300 Barrington Road, Suite 140
16 Hoffman Estates, Illinois 60169
17 Telephone: (224) 875-3202

18 Robert S. Sola, *pro hac vice forthcoming*
19 Email: rssola@msn.com
20 ROBERT S. SOLA, P.C.
21 8835 SW Canyon Lane, Suite 130
22 Portland, Oregon 97225
23 Telephone: (503) 295-6880

14 *Attorneys for Plaintiff*